

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES of AMERICA,

4 -against-

18 CR 00625  
Plea

5 JAMES SPINA,

6 Defendant.  
7

8  
9 United States Courthouse  
10 White Plains, New York

11 May 2, 2019

12 B e f o r e: THE HONORABLE JUDITH C. MCCARTHY,  
13 United States Magistrate Judge  
14  
15

16 GEOFFREY S. BERMAN  
United States Attorney for  
17 the Southern District of New York  
BY: KATHRYN M. MARTIN  
18 Assistant United States Attorney  
19

20 HODGES WALSH & BURKE LLP  
Attorneys for Defendant  
21 BY: MICHAEL K. BURKE  
22  
23  
24  
25

1 THE CLERK: In the matter of the United States of  
2 America versus James Spina.

3 Counsel, please state your appearances for the  
4 record.

5 MS. MARTIN: Good evening, your Honor.

6 Kathryn Martin for the government and with me at  
7 counsel table is FBI Special Agent Eugene Hagan.

8 THE COURT: Good evening.

9 MR. BURKE: Good evening, your Honor. Michael Burke,  
10 Hodges, Walsh & Burke on behalf of James Spina.

11 THE COURT: Good evening, Mr. Burke. And good  
12 evening, Mr. Spina.

13 I kind of want to say it's still afternoon, since  
14 we're only at 5:15.

15 MS. MARTIN: I just said that to the agent. I'm like  
16 I probably should have said afternoon.

17 MR. BURKE: She started it.

18 THE COURT: It's still the afternoon.

19 MS. MARTIN: That's a fair characterization;  
20 afternoon.

21 THE COURT: Maybe late afternoon, but still  
22 afternoon.

23 So I believe we're here because Mr. Spina is prepared  
24 to plead guilty; is that correct?

25 MS. MARTIN: That is correct, your Honor. This

1 matter is currently pending before Judge Karas and he has  
2 referred the plea to your Honor.

3 THE COURT: Okay. I am going to, Mr. Spina, this is  
4 a long proceeding and there's a long series of questions I have  
5 to ask you. So I'm going to allow you to remain seated  
6 throughout this. It's also, I think, going to be easier to get  
7 a good recording and I see that Mr. Burke has pulled the  
8 microphone in front of you.

9 So I ask that when I ask you some questions, the  
10 questions I ask you, just speak clearly and loudly so that the  
11 microphone will allow the transcription to be clear. Okay?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. So I want to advise you,  
14 Mr. Spina, that this is not a trial. It's my understanding  
15 that you've decided to enter a guilty plea.

16 This proceeding is for the purpose of ensuring that  
17 you are aware of your rights in connection with your plea and  
18 that any waiver of those rights is knowing and voluntary prior  
19 to entering your guilty plea.

20 If at any time you do not hear or understand what I  
21 say to you, please interrupt me so that I can repeat and  
22 explain what I've said. If you want to confer with your  
23 attorney regarding anything I say, please interrupt me so that  
24 you can do that.

25 Do you understand that?

1 THE DEFENDANT: I do, your Honor.

2 THE COURT: I also want to advise you that you have  
3 the right to be represented by counsel throughout the entire  
4 case, and you may consult with your attorney at any stage of  
5 this proceeding.

6 You also have the right to remain silent. Any  
7 statement that you do make may be used against you. You have  
8 this right to remain silent even if you already made statements  
9 to law enforcement officers.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Ms. Hummel, could you please place  
13 Mr. Spina under oath or affirmation.

14 (James Spina sworn)

15 THE COURT: It's important for you to understand,  
16 Mr. Spina, that if you knowingly make a false statement during  
17 these proceedings, you could be subject to prosecution for the  
18 crime of perjury, or for making a false statement to the Court,  
19 and you could face a punishment of up to five years  
20 imprisonment and a \$250,000 fine for committing such a crime.  
21 Such punishment would be separate and apart from any sentence  
22 you may be facing on the crime charged in the felony  
23 indictment.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: What is your full name?

2 THE DEFENDANT: James Spina.

3 THE COURT: And how old are you?

4 THE DEFENDANT: Sixty-one.

5 THE COURT: Are you a United States citizen?

6 THE DEFENDANT: I am.

7 THE COURT: How far did you go in school?

8 THE DEFENDANT: High school, college, chiropractor  
9 school.

10 THE COURT: You completed college and completed  
11 chiropractor school; right?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Okay. And was the chiropractor school  
14 after college?

15 THE DEFENDANT: Yes, it was.

16 THE COURT: Thank you. Are you currently or have you  
17 been recently under the care of a doctor or psychiatrist for  
18 any reason?

19 THE DEFENDANT: I have not.

20 THE COURT: Have you taken any mind-altering drugs,  
21 medicines or pills, or consumed any alcohol in the last 24  
22 hours?

23 THE DEFENDANT: I have not.

24 THE COURT: Have you ever been hospitalized or  
25 treated for alcoholism or drug addiction?

1 THE DEFENDANT: I have not.

2 THE COURT: Is your mind clear today?

3 THE DEFENDANT: It is.

4 THE COURT: Do you understand what's happening at  
5 this proceeding?

6 THE DEFENDANT: I do.

7 THE COURT: Does either counsel have any objection to  
8 the defendant's competence to proceed at this time?

9 MS. MARTIN: No, your Honor.

10 MR. BURKE: No, your Honor.

11 THE COURT: This proceeding is called a plea  
12 allocution. I want you to understand that you have an absolute  
13 right to have this plea allocution conducted before a United  
14 States District Judge. It is the district judge who will  
15 impose the sentence in this case.

16 If you consent, then I will conduct the plea  
17 allocution and I will then make a report to the district judge  
18 in which I will recommend whether or not the district judge  
19 should accept the plea of guilty. I will make that  
20 recommendation based on the information that is brought out  
21 during today's proceedings.

22 It is important for you to understand that the Court  
23 will not accept your plea unless the Court is satisfied that  
24 you fully understand all of your rights and that you are, in  
25 fact, guilty. Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that you have an  
3 absolute right to have this plea allocution conducted before a  
4 United States District Judge?

5 THE DEFENDANT: I do.

6 THE COURT: Is it your wish that I conduct the plea  
7 allocution?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Burke, did your client sign a consent  
10 to proceed before a United States Magistrate Judge on a felony  
11 plea allocution?

12 MR. BURKE: Yes, he has.

13 THE COURT: Ms. Hummel, could you please have the  
14 defendant identify his signature on this form.

15 THE CLERK: Mr. Spina, I show you this consent to  
16 proceed before a United States Magistrate Judge on a felony  
17 plea allocution form which you've signed and dated today,  
18 May 2, 2019. Is that your signature?

19 THE DEFENDANT: Yes, it is.

20 THE CLERK: Before signing this form, did you have a  
21 chance to read it and review it with your attorney?

22 THE DEFENDANT: I did.

23 THE COURT: Thank you.

24 Okay, so I have before me the consent to proceed  
25 before a United States Magistrate Judge on a felony plea

1 allocution that you have signed. What this form says,  
2 Mr. Spina, is that knowing you have the right to have this plea  
3 taken by a United States District Judge, you are agreeing to  
4 have the plea taken by me, a United States Magistrate Judge; is  
5 that correct?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Before you signed the form, did your  
8 lawyer explain it to you?

9 THE DEFENDANT: I read it and, yes, he did.

10 THE COURT: Did anyone threaten or coerce you or  
11 promise you anything in order to get you to sign the form?

12 THE DEFENDANT: No, they did not.

13 THE COURT: Did you sign the form freely and  
14 voluntarily?

15 THE DEFENDANT: I did.

16 THE COURT: Counsel, do either of you know of any  
17 reason why the waiver and consent to proceed with this plea  
18 allocution before a United States Magistrate Judge should not  
19 be accepted?

20 MS. MARTIN: No, your Honor.

21 MR. BURKE: No, your Honor.

22 THE COURT: I find the defendant, James Spina, is  
23 fully competent and understands the proceedings before him. I  
24 also find he's capable of waiving his right to appear before a  
25 United States District Judge in order to enter his guilty plea



1 and I therefore accept the consent form, which has been signed  
2 and is now part of the Court record. The consent form is  
3 marked as Court Exhibit 1 and will remain in the court file.

4 Mr. Spina, I've been informed you wish to change your  
5 plea and to enter a plea of guilty as to certain charges; is  
6 that correct?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Before deciding whether to accept your  
9 guilty plea, I'm going to ask you certain questions. It's very  
10 important that you answer these questions honestly and  
11 completely. The purpose of these proceedings is to make sure  
12 that you understand your rights, to decide whether you're  
13 pleading guilty of your own free will, and to make sure that  
14 you're pleading guilty because you are guilty, and not for some  
15 other reason. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: If you don't understand any of the  
18 questions, or if you want at any time to consult with your  
19 attorney, please say so because it's important that you  
20 understand every question before you answer it. Do you  
21 understand that?

22 THE DEFENDANT: I do.

23 THE COURT: So I have before me the indictment  
24 containing the charges against you in this case. This is a  
25 three-count indictment that you've been charged in.

1 Count One is conspiracy to commit healthcare fraud.  
2 Count Two is healthcare fraud. Count Three is obstruction of a  
3 federal audit.

4 Count One, which is conspiracy to commit healthcare  
5 fraud, is the count that you will be pleading guilty to  
6 pursuant to the plea agreement and that is -- Count One, the  
7 conspiracy to commit healthcare fraud is in violation of Title  
8 18, United States Code, Section 1349.

9 Count Two, which is healthcare fraud, is in violation  
10 of Title 18, United States Code, Section 1347.

11 And Count Three is obstruction of a federal audit in  
12 violation of Title 18, United States Code, Section 1516.

13 Have you had an opportunity to review the indictment?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand what it says?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you need me to read it in open court?

18 THE DEFENDANT: I do not.

19 THE COURT: Have you had time to talk to your  
20 attorney about these charges and about how you wish to plead?

21 THE DEFENDANT: I have, your Honor.

22 THE COURT: Have you discussed with your attorney the  
23 charges against you, including the charges you intend to plead  
24 guilty to, as well as any other charges that the government may  
25 have made in this case?

1 THE DEFENDANT: I have, your Honor.

2 THE COURT: Has your attorney told you the  
3 consequences of pleading guilty?

4 THE DEFENDANT: Yes, he has, your Honor.

5 THE COURT: And are you satisfied with your  
6 attorney's representation of you?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And have you told your attorney  
9 everything you know about this case?

10 THE DEFENDANT: I have, your Honor.

11 THE COURT: Okay. So who has the original plea  
12 agreement?

13 MS. MARTIN: I have it.

14 THE DEFENDANT: May I ask him one question?

15 THE COURT: Yes. Yes, you could confer with your  
16 attorney. Yes.

17 (Pause)

18 MR. BURKE: We're all set, your Honor.

19 THE COURT: Okay. So the original plea agreement is  
20 going to be marked as a government exhibit, and it's going to  
21 remain in the custody of the government's attorney.

22 Ms. Hummel, could you please have the defendant  
23 identify his signature on the last page of the plea agreement.

24 THE CLERK: Mr. Spina, I show you this plea  
25 agreement, which is dated May 2, 2019, which you also signed

1 and dated today, May 2, 2019.

2 Is that your signature?

3 THE DEFENDANT: It is.

4 THE CLERK: Before signing this document, did you  
5 have a chance to read it and review it with your attorney?

6 THE DEFENDANT: I did.

7 THE CLERK: Thank you.

8 THE COURT: Mr. Burke, did you review each and every  
9 part of this plea agreement with your client?

10 MR. BURKE: I did, your Honor.

11 THE COURT: Okay. And Mr. Spina, are you satisfied  
12 you understand this entire plea agreement which your lawyer has  
13 reviewed with you?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you have any questions, either for me  
16 or for your lawyer, about what this plea agreement says?

17 THE DEFENDANT: I do not.

18 THE COURT: Does this plea agreement contain the  
19 complete understanding between you and the government in  
20 connection with this case?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that anything which is  
23 not set forth in the plea agreement, or which is not told to me  
24 at this time on the record, will not be binding on the outcome  
25 of your case?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Ms. Martin, is there anything beyond the  
3 written plea agreement that the Court should be aware of?

4 MS. MARTIN: No, your Honor.

5 THE COURT: And Mr. Burke, is there any other  
6 agreement the Court should know about?

7 MR. BURKE: No, your Honor.

8 THE COURT: Mr. Spina, did you sign this plea  
9 agreement freely and voluntarily?

10 THE DEFENDANT: I did, your Honor.

11 THE COURT: Did anyone force you or coerce you or  
12 threaten you or promise you anything other than what is set  
13 forth in the written plea agreement in order to get you to sign  
14 the plea agreement?

15 THE DEFENDANT: No, they have not, your Honor.

16 THE COURT: Okay. I want to go over certain aspects  
17 of the plea agreement with you to make sure that you understand  
18 what you're agreeing to.

19 You are agreeing to plead guilty to Count One of the  
20 indictment which charges you with conspiracy to commit  
21 healthcare fraud from in or about 2011 through in or about  
22 September 2017, in violation of Title 18, United States Code,  
23 Section 1349.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor, I do.

1           THE COURT: And if you are convicted of the charge  
2 contained in Count One of this felony indictment, either after  
3 trial or by a plea of guilty, you'd be subject on Count One to  
4 a maximum sentence of ten years imprisonment, a maximum term of  
5 three years supervised release, a maximum fine pursuant to  
6 Title 18, United States Code, Section 3571, of the greatest of  
7 \$250,000, twice the gross pecuniary gain derived from the  
8 offense, or twice the gross pecuniary loss to a person other  
9 than you as a result of the offense and a mandatory \$100  
10 special assessment.

11           Do you understand that?

12           THE DEFENDANT: Yes, your Honor.

13           THE COURT: If you are sentenced to a term of  
14 imprisonment, even if you are sentenced to the maximum term of  
15 imprisonment, and if you're also sentenced to a term of  
16 supervised release, and if you then violate the conditions of  
17 supervised release, you could be sentenced to an additional  
18 term of imprisonment for violating the conditions of your  
19 supervised release, which, in this case, would be an additional  
20 term of up to two years.

21           Do you understand that?

22           THE DEFENDANT: Yes, your Honor.

23           THE COURT: In addition, if you violate the  
24 conditions of your supervised release, you would not receive  
25 credit for any time already served in prison or for time served

1 on supervised release.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Under this plea agreement, Mr. Spina, you  
5 are also admitting to the forfeiture allegation with respect to  
6 Count One of the indictment, and you're agreeing to forfeit to  
7 the US a sum of money of at least \$1.5 million, but not more  
8 than \$65 million in US currency, representing proceeds  
9 traceable to the commission of this offense.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 MS. MARTIN: Your Honor, I just want to -- as your  
13 Honor can probably tell from the plea agreement, there's a  
14 dispute between the parties about loss amount, which is related  
15 both to restitution and forfeiture, although restitution and  
16 forfeiture would likely be different amounts here. So for the  
17 purposes of the plea agreement, because that amount doesn't  
18 have to be set at the time of the plea, we're leaving it open  
19 and there is a floor of 1.5 million, and a ceiling of  
20 \$65 million, which matches the range and the loss amount.

21 I don't anticipate, as I told Mr. Burke, that it  
22 would be 65 million, but we do anticipate that it would be  
23 significantly greater than 1.5 million; probably somewhere in  
24 the neighborhood of 40 million for restitution, not necessarily  
25 for forfeiture. So that's why that's a very conservative

1 estimate to make sure that we have room, because we're still  
2 getting loss amounts in from insurance companies.

3 THE COURT: Okay.

4 MS. MARTIN: And like I said, the parties are  
5 disputing that and we anticipate a *Fatico* hearing for loss. So  
6 that's related.

7 THE COURT: So, Mr. Spina, did you just hear what  
8 Ms. Martin said?

9 THE DEFENDANT: Yes, I did, your Honor.

10 THE COURT: Okay. And it's a wide range, but it's a  
11 wide range because they don't know where it's going to lead to.  
12 But for the purposes of today, you understand that the floor is  
13 at 1.5 million, and the highest amount is 65 million.

14 You understand that, right?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: Now, on the issue of forfeiture, is it  
17 the same range, Ms. Martin, or is it different?

18 MS. MARTIN: It is the same range, your Honor.

19 In terms of forfeiture, the defendant can only be  
20 responsible for funds for which he either personally got or  
21 controlled. In this case, we think he personally got somewhere  
22 in the neighborhood of 9 to 10 million, but that he had control  
23 over significantly more than that.

24 So, again, \$65,000 is sort of -- 65 million, excuse  
25 me, is very high, but we do think that the number could be well



1 north of 10 million and so we're just putting a range. But  
2 like I said, the parties -- part of the reason of having a  
3 *Fatico* is to sort of come to some sort of determination with  
4 respect to all of those amounts.

5 THE COURT: Okay.

6 Mr. Spina, do you understand that as Ms. Martin  
7 explained, and have you had an opportunity to discuss that with  
8 your attorney prior to today?

9 THE DEFENDANT: I understood what she said. I  
10 believe that's the first time I'm hearing those numbers, your  
11 Honor.

12 THE COURT: Okay. I'm just going to give you one  
13 moment, Mr. Burke.

14 MR. BURKE: Yes.

15 THE COURT: So you can either respond to Ms. Martin  
16 or have an opportunity to explain to Mr. Spina, because you may  
17 not have heard them in that context, and I want to make sure  
18 that Mr. Burke will explain to you and that you understand it.

19 THE DEFENDANT: Thank you.

20 (Pause)

21 THE COURT: Okay. Mr. Spina, do you understand now?

22 THE DEFENDANT: Yes, I do, your Honor.

23 THE COURT: Okay. Thank you.

24 And so, Mr. Spina, do you understand that these are  
25 the possible sentences that could be imposed following a plea

1 of guilty in this matter?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: And I believe you said you're a US  
4 citizen; right?

5 THE DEFENDANT: That's correct, your Honor.

6 THE COURT: Okay. Do you also understand that you're  
7 pleading guilty to a felony offense and that such an  
8 adjudication may deprive you of certain valuable civil rights,  
9 which may include the right to vote; the right to hold public  
10 office; the right to serve on a jury; the right to possess any  
11 type of firearm, including rifles and shotguns; the right to be  
12 considered for certain types of employment or to be bonded; to  
13 serve in the United States military; and the right to possess  
14 or obtain certain government issued licenses, including  
15 licenses that may be required in certain professions and  
16 occupations?

17 Do you understand all that?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: Do you understand that these are the  
20 possible legal consequences of a guilty plea?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that the United States  
23 Sentencing Commission has issued guidelines for judges to  
24 follow in determining the appropriate sentence in a criminal  
25 case?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that these guidelines  
3 are not mandatory, but they must be considered by the Court,  
4 along with other factors listed at 18 U.S.C., Section 3553,  
5 when the judge determines the appropriate sentence to impose,  
6 including possible departures from the guidelines?

7 THE DEFENDANT: I do, your Honor.

8 THE COURT: Have you and your attorney talked about  
9 how the sentencing guidelines would be calculated in your case?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: So under this plea agreement, there's  
12 clearly a dispute as to the loss amount, which Ms. Martin was  
13 talking about earlier and which is set forth in here. And that  
14 you, Mr. Spina, and your attorney are contending that the loss  
15 was more than 1.5 million, but not more than 3.5 million, which  
16 would equate to a different level under the guidelines.

17 The government contends that the loss was more than  
18 25 million, but not more than 65 million, and that would equate  
19 to a different level.

20 So when I'm going to talk to you about -- that's a  
21 factual dispute that will be decided by the district judge, but  
22 what that does, because there's this dispute, it changes the  
23 guidelines offense level, so it's either a 29 or 37.

24 So when I'm going to talk to you right now about what  
25 the plea agreement sets forth as a stipulated guidelines range,

1 but that plea agreement, you'll see that there's guideline  
2 range depending on the loss amount. So we're going to go over  
3 that right now so it's clear.

4 The plea agreement in this case sets forth a  
5 stipulated sentencing range if the loss amount is more than  
6 1.5 million, but not more than 3.5 million, and the loss to  
7 Medicaid is less than 1 million.

8 Well, if the loss amount is more than 1.5 million,  
9 but not more than 3.5 million, I believe the guideline range is  
10 87 to 108 months imprisonment.

11 Is that correct how I'm reading that, Ms. Martin?

12 MS. MARTIN: Yes, your Honor. The stipulated  
13 guideline range for the purposes of the plea agreement is 87 to  
14 120, but that's sort of at the end.

15 THE COURT: Yes.

16 MS. MARTIN: But, yes, you are correct. If the Court  
17 finds the loss amount is between 1.5 and 3.5, and the loss to  
18 Medicare is less than a million dollars, then, yes, it is 87 to  
19 108 months.

20 THE COURT: And if the Court should find the  
21 guideline range -- just going to go over it exactly as it is  
22 written so I don't interpret it incorrectly.

23 The guideline range would be 210 to 262 months  
24 imprisonment if the loss amount is more than 25 million but  
25 less than 65 million, and the enhancement pursuant to USSG

1 Section 2B1.1(b) (7) applies and that would yield a total  
2 sentencing range of 87 to 262 months imprisonment. The  
3 statutory maximum for Count One is 120 months.

4 Do you understand that?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: That's the total sentencing range is 87  
7 to 120 months imprisonment.

8 Do you understand that?

9 THE DEFENDANT: I do.

10 THE COURT: The fine range is also different,  
11 depending on which guideline level the Court finds is  
12 applicable. At guideline level 29, the applicable fine range  
13 is 30 to 300,000. At guideline level 37, the applicable fine  
14 range is 40 to 400,000.

15 Do you understand that?

16 THE DEFENDANT: I do.

17 THE COURT: Do you understand that this is simply an  
18 understanding between you and your lawyer and the lawyer for  
19 the government, and it's not even a complete understanding,  
20 because there are ranges, but that it is not binding on the  
21 district judge when he imposes sentence?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Okay. Do you understand the district  
24 judge will consider the guidelines, will determine what the  
25 appropriate guideline offense level is, and will impose a

1 sentence in accordance with the statute, which, in this case, a  
2 prison term will not be -- what do we have, statutory maximum  
3 is 120 months; correct?

4 MS. MARTIN: Yes, your Honor.

5 THE COURT: Do you agree, Mr. Burke?

6 MR. BURKE: Yes, your Honor.

7 THE COURT: Okay. Do you understand that, Mr. Spina?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Do you understand that the Court will not  
10 be able to determine the appropriate sentence until after a  
11 presentence report has been prepared and until you and your  
12 attorney, as well as the government, have had an opportunity to  
13 challenge the facts reported in the presentence report, as well  
14 as the calculation of the sentencing guideline range, and any  
15 sentence recommendation in that report?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you also understand that if there are  
18 any objections to the presentence report that those objections  
19 will be ruled on by the Court and, if necessary, a hearing will  
20 be held to determine what information is relevant to the  
21 Court's determination of the sentence?

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 MR. BURKE: Your Honor, if I may, just as to the  
25 criminal history.

1 THE COURT: Yes.

2 MR. BURKE: I did want to bring it to the Court's  
3 attention one point.

4 Paragraph -- on page 3, paragraph B1, it references a  
5 DWI from 1982 that was adjourned in contemplation of dismissal.

6 THE COURT: I saw that.

7 MR. BURKE: And adjournment in contemplation of  
8 dismissal does not result in any criminal history points, nor  
9 does it result in any criminal conviction.

10 And the section under New York State Law that  
11 controls that is the Criminal Procedure Law 170.55, and in  
12 particular, 170.55, sub 8: Upon the dismissal of an accusatory  
13 instrument, pursuant to that section, the arrest and  
14 prosecution shall be deemed a nullity and the defendant shall  
15 be restored in contemplation of the law to the status he  
16 occupied before his arrest and prosecution.

17 So just for a complete narrative as to the  
18 applicability of an A/CD in New York state is that it's as if  
19 there was no arrest. It's a nullity.

20 THE COURT: Okay. And the way I'm reading this,  
21 Ms. Martin, you don't have any objection to that  
22 interpretation.

23 MS. MARTIN: No, not at all. Like I said, we just  
24 include it because it comes up on his rap sheet, so the PSR  
25 will include it. So I was just trying to be complete. But no,

1 and it has no affect on the guidelines.

2 THE COURT: Okay. Thank you.

3 Under this agreement, Mr. Spina, you're agreeing not  
4 to file a direct appeal, nor bring a collateral challenge,  
5 including but not limited to an application under Title 28,  
6 United States Code, Section 2255, and/or Section 2241 of any  
7 sentence within or below the stipulated guideline range of 87  
8 to 121 -- 120 months imprisonment, and the government will  
9 not appeal any sentence within or above the stipulated  
10 guideline range.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: You're also agreeing not to appeal any  
14 term of a supervised release that is less than or equal to the  
15 statutory maximum.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: You're also agreeing not to appeal any  
19 fine that is less than or equal to 400,000, and the government  
20 agrees not to appeal any fine that is greater than or equal to  
21 30,000.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: You're also agreeing not to appeal any  
25 restitution amount that is less than or equal to 65 million,



1 and the government agrees not to appeal any restitution amount  
2 that is greater than or equal to 1.5 million.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor. I have one  
5 question. May I ask?

6 THE COURT: Yes.

7 (Pause)

8 THE COURT: Okay. You're also agreeing not to appeal  
9 any forfeiture amount that is less than or equal to  
10 1.5 million, and the government agrees not to appeal any  
11 forfeiture amount that is greater than or equal to 65 million.

12 Do you understand all that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Do you also understand --

15 (Pause)

16 MR. BURKE: I'm sorry, your Honor. One moment.

17 THE COURT: That's okay.

18 (Pause)

19 THE COURT: Do you also understand, Mr. Spina, that  
20 if you disagree with the Court's sentencing decision, that will  
21 not give you a basis for withdrawing your plea of guilty?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you also understand that parole has  
24 been abolished, and if you are sentenced to a term of  
25 imprisonment, you will not be eligible for early release on

1 parole?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that you do not have to  
4 plead guilty, and you have an absolute right to plead not  
5 guilty, and to have the matter go to trial by judge or by jury?

6 THE DEFENDANT: I do, your Honor.

7 THE COURT: Do you understand that if you choose to  
8 plead not guilty, you are entitled to have a speedy and public  
9 trial of your case?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that at any trial of  
12 this matter, you would be entitled to the presumption of  
13 innocence, and that the presumption would remain with you until  
14 the government proves each and every element of the crime  
15 charged beyond a reasonable doubt, to the satisfaction of the  
16 judge, if it's a judge trial, or to the unanimous satisfaction  
17 of the jury, if it's a jury trial?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: At that trial you would have the right,  
20 with the assistance of your attorney, to confront and cross  
21 examine the witnesses against you. You would have the right to  
22 call witnesses to testify for you and to have subpoenas issued  
23 to compel witnesses to give testimony.

24 You would also have the right to testify at your  
25 trial, but you could not be forced to testify. If you decide

1 not to testify, your decision to remain silent could not be  
2 held against you in any way.

3 Do you understand that?

4 THE DEFENDANT: I do, your Honor.

5 THE COURT: At your trial, you would have the right,  
6 which I've already mentioned, to the assistance of an attorney,  
7 and to have an attorney appointed to represent you if you could  
8 not afford counsel.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that if you plead  
12 guilty to the charges in this felony indictment, that you would  
13 give up your right to a trial, and the except for the right to  
14 counsel, you'd give up all the other rights which I've  
15 explained to you here?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Before I proceed to my last question and  
18 go to the plea allocution stage, is there anything else in the  
19 plea agreement that counsel would like me to review with  
20 Mr. Spina?

21 MS. MARTIN: No, your Honor.

22 MR. BURKE: No, your Honor.

23 THE COURT: Thank you.

24 Mr. Spina, have you clearly heard and understood  
25 everything I've said to you?

1 THE DEFENDANT: I have, your Honor.

2 THE COURT: Do you have any questions for me or for  
3 your attorney about anything I've said or about anything I've  
4 asked you?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Okay. Ms. Martin, I'd like you to tell  
7 me what are the elements of the offense, and what is the  
8 government prepared to prove at trial to establish those  
9 elements.

10 MS. MARTIN: Yes, your Honor.

11 The government -- Mr. Spina is pleading to Count One  
12 of the indictment, which is conspiracy to commit healthcare  
13 fraud. To prove a conspiracy to commit healthcare fraud in  
14 violation of Section -- Title 18, United States Code, Section  
15 1349, the government must demonstrate:

16 One, that two or more people entered into an  
17 agreement to commit healthcare fraud; and

18 Two, that each defendant knowingly and intentionally  
19 joined in the agreement.

20 To prove a violation of Section 1347, which is  
21 healthcare fraud, the government must prove:

22 One, a scheme to defraud or a scheme to obtain money  
23 or property by means of material, false and fraudulent  
24 pretenses, representations or promises in connection with the  
25 delivery of or payment for healthcare benefits;

1           Two, the defendant knowingly and willfully executed  
2 or attempted to execute that scheme with the intent to defraud;  
3 and

4           Three, the target of the scheme was a healthcare  
5 benefit program.

6           At trial, the government would prove the following  
7 through documentary evidence, including emails, consensual  
8 recordings and witness testimony, that from in or about 2011,  
9 through in or about September 2017, the defendant, a licensed  
10 chiropractor, participated in a widespread scheme to defraud  
11 Medicare and other healthcare benefit programs, as that term is  
12 defined in Title 18. In particular, the government would prove  
13 that during the relevant time period, Dolson Avenue Medical was  
14 a registered medical service corporation in New York state that  
15 purported to provide a variety of pain management and  
16 rehabilitation services, including physical medicine and  
17 rehabilitation, chiropractic services, physical therapy,  
18 diagnostic testing and acupuncture.

19           The practice primarily provided treatment services  
20 from its clinic located at 201 Dolson Avenue in Middletown, New  
21 York. In addition to Dolson Avenue Medical, multiple other  
22 corporations, including other registered medical corporations,  
23 billed Medicare and other insurance providers from the 201  
24 Dolson Avenue location during the relevant time period.

25           At trial, the government would prove that although on

1 paper Dolson Avenue Medical and the associated businesses  
2 appeared to be separate entities owned by multiple different  
3 qualified individuals, in reality, the defendant and his  
4 co-conspirator, Jeffrey Spina, also a doctor of chiropractic,  
5 were the true owners and operators of the different medical  
6 service corporations.

7           The government would prove that such ownership was  
8 contrary to New York State Law, which at all times relevant to  
9 the charged conspiracy required that medical service  
10 corporations in New York state be owned and operated by  
11 licensed physicians. New York state also had similar  
12 requirements for physical therapy and acupuncture corporations.

13           The government would prove that the defendant, aware  
14 that he could not legally own medical corporations and some of  
15 the associated businesses, went to great lengths to conceal his  
16 control and ownership of Dolson Avenue Medical, and some of the  
17 associated businesses.

18           For example, the defendant recruited medical doctors  
19 and other qualified professionals to serve as the nominee  
20 owners of the businesses when, in reality, James Spina and  
21 Jeffrey Spina were the true owners and operators of Dolson  
22 Avenue Medical.

23           The government would also prove that James Spina  
24 further concealed his ownership by transferring revenues of  
25 these medical companies into purported real estate and

1 marketing companies he and Jeffrey Spina owned, and referred to  
2 these payments as rent or marketing fees.

3 In addition to James Spina's fraudulent ownership of  
4 Dolson Avenue Medical and the associated businesses, the  
5 government would prove that James Spina routinely submitted or  
6 caused to be submitted fraudulent claims to Medicare and other  
7 insurance providers.

8 I would note initially that the claims were false, in  
9 part because it listed the wrong owners. It represented that  
10 medical -- licensed medical doctors and other qualified  
11 professionals were the owners in fact of the businesses when  
12 they were not. The claims were also false because, among other  
13 reasons, the services were not medically necessary. The  
14 medical services were never actually rendered or the services  
15 were double billed, meaning that the defendant submitted and/or  
16 caused to be submitted multiple claims for the same service to  
17 two different insurance providers.

18 With respect to billing for medical unnecessary  
19 services, the government would prove that James Spina  
20 prescribed or encouraged other medical providers to prescribe  
21 services such as osteo manipulative therapy, EMGs, MRIs and  
22 certain durable medical equipment, like back braces, because he  
23 either had a kickback arrangement with a third-party provider  
24 of this service, such as with the MRIs or durable medical  
25 equipment, or the services were reimbursed at a higher rate,

1 not because they were medically necessary.

2 The government would further prove that as part of  
3 the scheme, the defendant regularly altered and fabricated  
4 medical records himself and also directed others to make up  
5 and/or falsify patient records.

6 Similarly, the government would prove in connection  
7 with audits by Medicare and other insurance providers, the  
8 defendant impeded and obstructed the audits by fabricating  
9 records and concealing patient files.

10 In connection with this wide-ranging scheme, the  
11 defendant submitted tens of millions of dollars of false claims  
12 to Medicare and other insurance providers, and we would prove  
13 or we intend to prove that it resulted in tens of millions of  
14 dollars of losses.

15 Finally, the government would prove that the  
16 defendant acted knowingly and willfully.

17 THE COURT: And all this happened, you said, in  
18 Middletown, New York?

19 MS. MARTIN: Yes, your Honor. The clinic is located  
20 in Middle -- was located in Middletown, New York.

21 THE COURT: Okay.

22 MS. MARTIN: That's where the billing office was  
23 where things were --

24 THE COURT: Thank you.

25 MS. MARTIN: -- created and submitted.



1 THE COURT: Okay, Mr. Spina, did you hear what AUSA  
2 Martin said?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: At this time, how do you wish to plead to  
5 the charge?

6 MR. BURKE: Your Honor, I just want to have clarity.  
7 He's going to allocute. He heard what she said and now he's  
8 prepared to enter his plea.

9 THE COURT: Okay.

10 MR. BURKE: Not accepting everything that --

11 THE COURT: I understand that. I just want to make  
12 sure you heard what Ms. Martin said.

13 THE DEFENDANT: Yes, I did, your Honor.

14 THE COURT: And now I'm going to ask you how you wish  
15 to plead, and you're only pleading guilty to Count One of the  
16 indictment. So I want to know how do you wish to plead to  
17 Count One of the indictment. And then after I will ask you to  
18 tell me in your own words what you did.

19 THE DEFENDANT: Okay.

20 THE COURT: But the first I want to do is how do you  
21 wish to plead to Count One of the indictment?

22 THE DEFENDANT: Guilty.

23 THE COURT: Okay. Has anyone threatened you or  
24 coerced you or pressured you improperly in order to get you to  
25 plead guilty to these charges?

1 THE DEFENDANT: They have not.

2 THE COURT: Has anyone made any promises to you in  
3 order to induce you to plead guilty?

4 THE DEFENDANT: No.

5 THE COURT: Has anyone made any specific promises to  
6 you about what the sentence of the Court will be?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Mr. Spina, can you tell me in your own  
9 words what you did to commit this crime?

10 THE DEFENDANT: Yes, your Honor.

11 May I ask Mr. Burke one question?

12 THE COURT: Of course.

13 (Pause)

14 THE COURT: Are you ready, Mr. Spina, to tell me in  
15 your own words what you did to commit this crime?

16 THE DEFENDANT: Yes, your Honor.

17 From 2011 to 2017, I agreed to participate with  
18 others to financially benefit from services rendered by a  
19 medical corporation in which I was not entitled to and which is  
20 not permissible or legal under the New York State Medical  
21 Corporate Practice Law.

22 These corporation finance's entities were controlled  
23 by myself and my brother, which we exercised control over the  
24 various expenses income and profits.

25 MR. BURKE: Excuse me.

1 (Pause)

2 MR. BURKE: He's going to start over.

3 THE COURT: Okay.

4 THE DEFENDANT: In 2011 to 2017, I participated with  
5 other --

6 (Pause)

7 THE COURT: Mr. Spina, you ready?

8 THE DEFENDANT: From 2011 to 2017 --

9 THE COURT: And Mr. Spina.

10 THE DEFENDANT: Yes, sir. I'm sorry.

11 THE COURT: Just slow down.

12 THE DEFENDANT: Your Honor.

13 THE COURT: Only because I need to be able to hear  
14 you and understand everything you said, and if you speak too  
15 quickly, I will be struggling so --

16 THE DEFENDANT: I'm sorry.

17 THE COURT: -- if you could start again --

18 THE DEFENDANT: Yes.

19 THE COURT: -- and go a little bit more slowly.

20 THE DEFENDANT: Yes. From 2011 to 2017, I did  
21 knowingly agree with others to participate with medical  
22 corporations for services that were billed. These corporations  
23 were owned by medical doctors; however, the finances were  
24 controlled by myself and my brother of which we were not  
25 entitled to those monies. We benefited financially from these

1 corporations which otherwise, under the New York State Law, we  
2 are not entitled to. And this was in violation of the law.

3 THE COURT: Okay. Let me ask you some questions.

4 THE DEFENDANT: Certainly.

5 THE COURT: We'll start with the easy ones. Where  
6 did this happen?

7 THE DEFENDANT: At the address that Ms. Martin  
8 mentioned; 201 Dolson Avenue.

9 THE COURT: In Middletown, New York.

10 THE DEFENDANT: In Middletown, New York.

11 THE COURT: Okay. Did you commit these acts  
12 knowingly and willingly?

13 When you committed these acts, did you commit them  
14 knowingly and willfully?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And did you know it was against the law  
17 to do what you were doing at the time that you did them?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Okay. So now I want to ask some specific  
20 facts. You said you agreed with others --

21 THE DEFENDANT: Yes.

22 THE COURT: -- and you knowingly and intentionally  
23 participated in this. I want to make sure the elements of the  
24 healthcare fraud have been met. So what was the healthcare  
25 benefit program that was the target of the fraud that you are

1 pleading guilty to?

2 THE DEFENDANT: The healthcare insurance companies,  
3 your Honor.

4 THE COURT: I didn't --

5 THE DEFENDANT: The healthcare insurance companies.

6 THE COURT: Healthcare insurance companies. Okay.

7 MS. MARTIN: And I assume Mr. Burke would confirm  
8 that there's no dispute that they are healthcare benefit  
9 programs. It's Medicare and multiple other insurance  
10 providers.

11 MR. BURKE: We don't contest that, your Honor.

12 THE COURT: Okay. And you, during this conspiracy,  
13 you received property as a result this, property and money, as  
14 a result of this scheme to defraud and you benefited from it;  
15 is that correct?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Okay.

18 Ms. Martin, is there anything else which you would  
19 like me to allocute Mr. Spina on?

20 MS. MARTIN: Just that, sort of -- I guess that we  
21 obviously view that the scheme as much broader, but I think --  
22 I've spoken to Mr. Burke and we think that the scheme, the  
23 narrower scheme about the fraudulent ownership is sufficient to  
24 meet the elements. But I just want it to be clear that he  
25 understands, Mr. Spina understands that the bills that were

1 submitted, or he caused to be submitted to Medicare and the  
2 other insurance providers, he understood were false because  
3 they represented -- they had material misstatements about the  
4 ownership of the -- the medical corporations and some of the  
5 other corporations as well.

6 THE COURT: Okay.

7 So, Mr. Spina, when bills were submitted to the  
8 insurance companies and to Medicare --

9 THE DEFENDANT: Yes.

10 THE COURT: -- the ownership listed the owner's name  
11 of these -- of this medical company; right?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Okay. Did you understand when you were  
14 submitting these bills and listing that, that that was false  
15 information that you were providing to the insurance companies  
16 and to Medicare?

17 MR. BURKE: Your Honor, just for some clarity.

18 THE COURT: Yes.

19 MR. BURKE: I think their theory on this is that he  
20 and his brother were the de facto owners. So there was  
21 ownership by the medical doctor of the corporation --

22 THE COURT: Yes.

23 MR. BURKE: -- but they exercised the control. And  
24 that's what he's --

25 MS. MARTIN: They're nominal owners.

1 MR. BURKE: They're nominal owners; correct.

2 MS. MARTIN: Which I think is what he just allocuted  
3 to.

4 MR. BURKE: Correct. He said that he is the --

5 THE COURT: Yes, but I want to understand -- part of  
6 the thing that the government wants to prove and part of the  
7 fraud is submitting information to them that was false to lead  
8 them to pay on these claims which had false information on  
9 them. And part of the false information that was on them, as I  
10 understand it, is that the names -- the owners listed on paper  
11 were nominal owners and that the true owners were Mr. Spina and  
12 his brother.

13 And I think that's an important element that has to  
14 be met here. So, Mr. -- I believe Mr. Spina has to allocute to  
15 that and explain that he understood that.

16 MS. MARTIN: Yes, your Honor. Thank you.

17 THE DEFENDANT: Your Honor, I do understand that and  
18 at the time of the activity, if a doctor saw the patient and he  
19 billed it out, I wasn't --

20 (Pause)

21 MS. MARTIN: Your Honor, if I may. I know they are  
22 speaking. I think your Honor understands, but I just want to  
23 make it clear, I don't know if this would be helpful or not.  
24 It is the government's view that Dolson Avenue Medical,  
25 Catskill Medical, this other Physical Medicine and Diagnostic,

1 those are just three examples, we think there are other  
2 businesses, but paperwork was submitted to Medicare and  
3 insurance providers that listed registered medical doctors,  
4 licensed medical physicians, as the owners of those businesses.

5 We believe and would be prepared to prove that, in  
6 fact, the owners, the people who controlled the ownership and  
7 operated those were James Spina and Jeffrey Spina, who are  
8 doctors of chiropractic, they cannot own medical corporations.

9 They submitted bills to the insurance providers that  
10 listed -- or the history or the application paperwork listed  
11 these medical doctors as the owners, when they weren't. That's  
12 material information to Medicare and the insurance providers,  
13 and that is how those claims that were submitted were false.

14 THE DEFENDANT: Yes. Yes, your Honor. Your Honor.

15 THE COURT: You prepared --

16 THE DEFENDANT: I'd like --

17 THE COURT: Mr. Burke.

18 MR. BURKE: One second.

19 THE COURT: Yes.

20 (Pause)

21 MR. BURKE: Your Honor, perhaps I can -- if the Court  
22 would indulge me to ask a few questions of my own client about  
23 what I think (indiscernible) the issues that the Court had.

24 Mr. Spina, the corporations and the paperwork related  
25 to the corporations that were submitted to the insurance



1 companies indicated that the doctors owned these corporations;  
2 correct?

3 THE DEFENDANT: Yes. Yes, that's correct.

4 MR. BURKE: And in fact, you and your brother  
5 controlled --

6 THE DEFENDANT: I'm not sure if they owned -- that  
7 they were going to provide service to the various carriers.  
8 I'm not sure if it said that they were the owner.

9 Your Honor, here's what I'd like to say. There's  
10 monies that came to me that were incorrect, that I knowingly go  
11 ahead and send and submit false claims saying that the services  
12 were now provided. Whoever provided the service, what it has  
13 the signature of is the signature of the doctor who provided  
14 the services for that --

15 THE COURT: Did you ever encourage those doctors to  
16 provide --

17 THE DEFENDANT: (Indiscernible).

18 THE COURT: -- to bill for things that weren't being  
19 billed?

20 MR. BURKE: Your Honor, that's not part of the  
21 allocution that he's admitting to.

22 THE COURT: Okay.

23 MR. BURKE: So I want to just stay --

24 THE COURT: Okay. So here's the thing, as it stands  
25 right now --

1 THE DEFENDANT: Yes.

2 THE COURT: -- I can't accept this allocution.

3 MR. BURKE: So let me just speak to him for a moment.

4 THE COURT: So we're going to take a little recess.

5 MR. BURKE: Yes.

6 THE COURT: Because I'm not going to accept the  
7 allocution based on how it's been done, because your client, to  
8 me, doesn't seem -- I'm not saying you're doing anything wrong,  
9 Mr. Spina. It's my responsibility to make sure that you're not  
10 pleading something you're not guilty to.

11 I believe that in a crime like this, it's complex,  
12 and I want to make sure you understood, you know, what you're  
13 pleading to. We've done that.

14 And I want to make sure that you're pleading guilty  
15 because you are guilty and so, therefore, one of the things is  
16 what you knew at the time when you were doing it, and was it  
17 done knowingly and willfully?

18 So I'm going to ask -- I think it would be just good  
19 to have you have this conversation without me standing here  
20 breathing down your neck. If we can't -- I'm going to give you  
21 about five minutes, Mr. Burke, and if we can't seem to get it  
22 right tonight, then we'll just close the proceeding down, and I  
23 won't accept the plea at this time.

24 But I think it would be good just to take five  
25 minutes for you guys to talk. Okay?

1 MR. BURKE: Thank you.

2 THE COURT: Thank you.

3 (Recess taken)

4 THE COURT: Okay, are we ready to proceed?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Okay. Mr. Burke, how would you like to  
7 proceed, would you like to have your client supplement what he  
8 was saying?

9 MR. BURKE: Yeah, I think what makes the most sense,  
10 he's just going to start again from the top as to the  
11 allocution that has been written out, and we've spoken about,  
12 that satisfies the elements of the offense that he is pleading  
13 guilty to.

14 THE COURT: Okay.

15 MR. BURKE: Okay?

16 THE DEFENDANT: Your Honor, I'm sorry I had a  
17 misunderstanding. So I apologize for that.

18 THE COURT: Okay. Thank you, Mr. Spina, you can  
19 proceed.

20 THE DEFENDANT: Yes. In 2011 to 2017, I did  
21 knowingly and intentionally agree with others to participate  
22 with medical corporations that billed medical insurance  
23 companies for services rendered. These corporations falsely  
24 appeared as they were owned by a medical doctor, but were in  
25 fact were controlled by myself and my brother, in which we

1 exercised control over the finances and the expenses of these  
2 corporations.

3 Claims were submitted to healthcare insurance  
4 companies to obtain payment. We thereby financially benefited  
5 from these corporations, which were otherwise -- which we were  
6 otherwise not entitled to under the New York State Law. I knew  
7 what I was doing was in violation of the law.

8 THE COURT: Ms. Martin, what do you think?

9 MS. MARTIN: Your Honor, I believe that -- I'm just  
10 trying to think through. He talks really fast. I just want to  
11 make sure I understand. I believe that is sufficient.

12 He understood that the claims that were submitted to  
13 Medicare and the insurance providers contained false  
14 information about ownership.

15 THE COURT: And that's what I want to confirm too. I  
16 think that's there, but it wasn't as explicit as I think you  
17 want and I want.

18 So at the time that you submitted these bills to the  
19 providers -- it's been a long day for me, so bear with me.

20 You knew that the ownership information that was  
21 placed on those bills was fraudulent.

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And when you did it, you did it knowingly  
24 and intentionally.

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Ms. Martin.

2 MS. MARTIN: Thank you, your Honor. I think that's  
3 sufficient to meet the elements of the statute.

4 THE COURT: Thank you.

5 Is there anything else which either counsel believes  
6 this Court needs to elicit from the defendant before making the  
7 recommendation contemplated by Rule 11 of the Federal Rules of  
8 Criminal Procedure?

9 MS. MARTIN: No, your Honor.

10 MR. BURKE: No, your Honor.

11 THE COURT: Mr. Burke, do you know of any reason why  
12 the Court should not recommend acceptance of your client's plea  
13 of guilty in this matter?

14 MR. BURKE: I don't.

15 THE COURT: Ms. Martin, do you know of any reason why  
16 the Court should not recommend acceptance of the plea?

17 MS. MARTIN: No, your Honor.

18 THE COURT: Mr. Spina, in light of everything that  
19 has been said here today, is it still your wish to plead guilty  
20 to Count One contained in the felony indictment?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: On the basis of the allocution and the  
23 responses to my questions, I find that the defendant is fully  
24 competent and capable of entering an informed plea.

25 I am satisfied, Mr. Spina, that you understand your

1 rights, including your right to go to trial, that you are aware  
2 of the consequences of your plea, including the sentence that  
3 may be imposed. Based on this plea allocution, I find that the  
4 plea is knowing and voluntary and is supported by an  
5 independent factual basis for each and every element of the  
6 crime charged.

7 Accordingly, I respectfully report and recommend to  
8 Judge Karas that the plea be accepted and the defendant be  
9 adjudged guilty of the offense charged in Count One of the  
10 felony indictment.

11 I direct that a presentence investigation be  
12 conducted by the United States Department of Probation and that  
13 a presentence report will be prepared.

14 Within 14 days from today, Mr. Spina, you need to go  
15 to the Department of Probation, and your attorney can accompany  
16 you, and you'll be interviewed by a representative from the  
17 Department of Probation.

18 I want to make sure you understand that you have to  
19 be fully honest and truthful during that interview, because if  
20 it comes to the Court that you have provided false, incomplete  
21 or misleading information, that may be held against you at the  
22 time of sentencing.

23 Do you understand that?

24 THE DEFENDANT: Yes, I do, your Honor.

25 THE COURT: And Ms. Martin, the prosecution case

1 summary for purposes of the presentence report is to be  
2 delivered to the Probation Department no later than 14 days  
3 from today. So that's May 16, 2019.

4 MS. MARTIN: Yes, your Honor.

5 THE COURT: And I'm going to further direct that the  
6 court reporter provide a transcript of these proceedings within  
7 30 days setting forth my report and recommendation of Judge  
8 Karas. The transcript is to come to me first for review.

9 The matter is adjourned for sentencing for  
10 September 17 at 10:00 a.m. before Judge Karas. You should  
11 contact Judge Karas' chambers to confirm the date and time of  
12 sentencing.

13 Is there anything further we need to do today?

14 MR. BURKE: Your Honor, only as to that date. I'm on  
15 trial then, but I will speak to Judge Karas as to an  
16 appropriate sentencing date --

17 THE COURT: I'm sure he will accommodate your  
18 schedule, Mr. Burke. This is probably more of a control date  
19 for him.

20 MR. BURKE: Thank you.

21 THE COURT: Anything else?

22 MS. MARTIN: Nothing from the government, your Honor.

23 THE COURT: Okay.

24 MR. BURKE: Nothing from the defense.

25 THE COURT: Thank you.

1                   Good luck, Mr. Spina.

2                   THE DEFENDANT: Thank you.

3                   (Proceedings concluded).

4   Certified to be a true and accurate  
5   transcript of the digital electronic  
6   recording to the best of my ability.

7

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8   U.S. District Court

9   Official Court Reporter

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